# In the Supreme Court of the United States

OCTOBER TERM, 1970

Supreme Court, U.S.
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**No. 669**

MUNICIPAL DISTRIBUTOR GROUP,
*Petitioner,*

vs.

FEDERAL POWER COMMISSION, *et al.*,
*Respondents.*

**No. 691**

ASSOCIATED GAS DISTRIBUTORS,
*Petitioners,*

vs.

AUSTRAL OIL COMPANY, *et al.*,
*Respondents.*

**No. 692**

PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK,
*Petitioner,*

vs.

AMERADA HESS CORPORATION, *et al.*,
*Respondents.*

## Brief for Respondent The California Company, a Division of Chevron Oil Company, in Opposition

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The California Company, a division of Chevron Oil Company, petitioner in No. 682, respectfully submits this brief in opposition to the petitions for writs of certiorari in the above-entitled cases.

## ADDITIONAL STATEMENT OF FACTS

At pages 4-12 of our petition for a writ of certiorari herein (No. 682), and in the appendix to that petition, we set out the facts concerning the present critical gas shortage, the deficiencies in the findings of the Commission pointed out by the court below and the facts, relevant to review by this Court, which have occurred since the decisions of the Commission and of the court below. We respectfully re-emphasize those facts and call the Court's attention to additional relevant events which have occurred since the filing of our petition:

1. On September 18, 1970, the Commission issued its Opinion and Order Determining Just and Reasonable Rates for Natural Gas Produced in the Hugoton-Anadarko Area.[1] A copy of this Opinion and Order is printed in Appendix A to this petition.[2] This decision of the Commission is particularly significant for the following reasons:

(a) The Opinion and Order recognized that the administrative proceedings in the instant case are incomplete and that the Commission has been charged by the Court of Appeals in this case with determining just and reasonable rates which will elicit the required level of supply of gas:

> "In *Southern Louisiana Area Rate Cases*, .....F. 2d ....., the Court of Appeals for the Fifth Circuit stressed the need for the Commission to review its cost computations in the light of demand, supply and the effect of the prices established" (App. A 6).
>
> "In determining area rates we have been charged by the Court of Appeals for the Fifth Circuit with predicting the probable demand for gas, determining the

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1. The Hugoton-Anadarko Area is a large gas producing area in Kansas, Oklahoma and Texas.

2. References to the appendices hereto are abbreviated herein as follows: "App. A ...." or "App. B ....."

desired level of supply and attempting to determine a price which will elicit that level of supply. *Southern Louisiana Area Rate Cases, supra.* The court noted that this task was difficult, but said it must nevertheless be attempted by the Commission" (App. A 23).

(b) The Opinion and Order re-emphasized the serious gas supply situation which the Court of Appeals held had been given inadequate—indeed, no—consideration by the Commission in this case:

"All major sources of energy in the United States are currently in short supply. Brown-outs have already occurred in some electric utility distribution areas. Restrictions on gas use have been imposed by distributors in a number of areas and are being considered in others. The stock-pile reserves of coal for electric utilities are below the level considered by the industry to be a safe operating margin. The installation of nuclear power plants has progressed more slowly than was forecast and it now appears that nuclear power will not be able to ease the increasing demand on fossil fuel for many years. Domestic oil reserves are declining. Low-sulphur coal and oil are in short supply. Desulphurization facilities are lagging behind projected demand to meet stringent air pollution standards, destined to grow more stringent in several major urban areas. Pipelines are unable to obtain the desired supplies of natural gas. In 1968, according to the statistics of the AGA, the national findings of natural gas fell below production. This occurred again to a greater degree in 1969, when only about 8.3 trillion cubic feet were added to reserves while production mounted to 20.6 trillion" (App. A 23).

"The evidence shows that the demand for gas has risen beyond all expectations of a few years ago and that it will rise within a few years to a level that will strain or even exceed the capacity of the industry to meet" (App. A 25).

(c) The Opinion and Order refers to the comments of the Court of Appeals in this case concerning an earlier settlement proposal herein which was rejected by the Commission:

"The Court of Appeals also dealt with the settlement offer rejected by the Commission in Southern Louisiana, and Commissioner Carver's dissent advocating the adoption of that settlement proposal as being within the 'zone of reasonableness':

> 'In light of the imprecision of costs, broad support for the settlement, evidence that the market has at least a procompetitive structure, and cumbersome nature of price regulation, it may be that the settlement arguments advanced by Commissioner Carver are persuasive. In this case, the settlement is championed by the producers, and before the Commission it was supported by gas distributors (whom we classify as representing consumer interests) accounting for over 87 percent of delivery volume . . . . Widespread use of the settlement technique would result in negotiation pitting market forces against each other on an aggregate scale, overseen by the Commission.'" (App. A 6-7).[3]

(d) The Opinion and Order, after careful consideration of the merits and appropriate findings based on the record, effectuated a settlement proposal agreed to by a majority of the parties, despite the opposition of two municipalities, a State Commission and a municipal distributor group (App. A 2). The Opinion and Order terminated area rate proceedings which had extended over more than six years. The Commission found:

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3. This quotation by the Commission from the opinion of the Court of Appeals appears in the footnote at page 46 of Appendix A to the petition in No. 680 by Continental Oil Company, et al. References to the appendices to that petition are abbreviated herein as follows: "Cont.App. ...." or "Cont.App. B ....."

"Having examined each provision of the proposed settlement upon its merits, we find that the proposal as a whole is in the public interest, and should be made the order of this Commission. It is fair to the consuming public, and will promote certainty and stability and reduce administrative burdens by reduction of contested issues. Adoption of the proposal will contribute to obtaining additional supplies of gas from this crucial area, and contribute to cooperation in the attempt to deal with the problems of gas supply. For all these reasons, the settlement proposal should be adopted" (App. A 22-23).

2. On September 29, 1970, the Commission handed down its Opinion and Order on Rehearing in the Texas Eastern Transmission Corporation Case (Opinion No. 565A).[4] That case involves a sale of gas from the Southern Louisiana area which was not consolidated in the instant proceedings. In its Opinion and Order the Commission recognized that the administrative proceedings in the case at bar are incomplete and held that "the just and reasonable rates which ultimately flow out of any settlement, or further proceedings in AR 61-2, or AR 69-1, should govern the level of payments in this case prior to October 1, 1968, as well as after that date" (App. B 2).

3. In our petition for a writ of certiorari in No. 682, we pointed out (p. 13, n. 15) that further settlement discussions in the case at bar were scheduled for September 14, the day our petition was filed. Those discussions, under the chairmanship of a representative of the Commission and participated in by all interest groups—producers, pipelines, distributors, state commissions and the Commission's Staff—continued throughout the week of September 14.

4. The pertinent excerpt from that opinion is printed in Appendix B to this petition.

After a short recess, they were resumed on September 29. On October 2, a substantial number of the parties, including the Commission's Staff, reached agreement in principle on the major issues under consideration, including, specifically, Southern Louisiana area rates to be effective both before and after October 1, 1968, and the amount and disposition of refunds. The most significant features of the agreement are provisions designed to stimulate discovery of new reserves. The proposed order would provide incentives for the discovery and dedication of new gas to the interstate market, both by providing a credit against refunds to producers for new gas which the producers commit to the interstate market and by an increase in rates which the industry can realize only when it shall have discovered and dedicated a fixed amount of substantial new reserves. A drafting committee under the chairmanship of a member of the Commission's Staff, and composed of representatives of all the interest groups, met on October 7 and 8. They are scheduled to meet again on October 15, and hopefully, shortly thereafter, will have drafted a final settlement agreement for submission to the Commission for its consideration and review.

## ARGUMENT

### I

We respectfully submit that the petitions of the Municipal Distributor Group, the Associated Gas Distributors and the Public Service Commission of the State of New York, Nos. 669, 691 and 692, respectively, are without merit. Each of these petitions questions the power of the court below to include in its judgment a provision that the Commission shall have power to reopen its orders and to make such new

orders as it deems in the public interest, taking into consideration the admonitions of the Court of Appeals and the new evidence relating to the critical gas shortage.

The question thus presented, we submit, is not substantial.

Each petitioner in Nos. 669, 691 and 692 argues the case as though it presented the question whether the Commission has power, after an unqualified affirmance of a rate order by a Court of Appeals, thereafter to change the rates so fixed and so affirmed. No such question is here presented. The court below provided that under its "judgment" the Commission "shall have the power and the duty to remedy the situation by changing its orders,"[5] and further provided that "Our affirmance of the Commission's orders is structured so as to allow the Commission great flexibility in dealing with this problem [the gas supply shortage],"[6] and that a "part of the remedy in this case"[7] is that the Commission shall have the authority "to reopen any part of its orders, including those affecting revenues from gas already delivered."[8] No one of the authorities cited in the petitions in Nos. 669, 691 and 692 has any relevance to this situation. The Court's power to enter such a judgment, and the Commission's power to act responsively to that judgment, is demonstrated in the brief for Texaco, Inc., et al., and the brief of Humble Oil and Refining Company, both of which are being filed herein in opposition to the petitions in Nos. 669, 691 and 692. We adopt the argument on this point in those two briefs.

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5. Cont. App. B 3.
6. Cont. App. B 1.
7. Cont. App. B 2.
8. Cont. App. B 2.

II

Many of the parties to the petitions and cross petitions in this case have submitted that the appropriate procedure for this Court to take at this premature stage of the proceedings is to deny all petitions for writs of certiorari. We agree that review by this Court of any part of the decision of the court below clearly is premature at this time. The administrative process has not been completed. The events related in our petition for a writ of certiorari, and in the statement of additional facts set forth above, indicate that a further order of the Commission in these proceedings, establishing just and reasonable rates for the past and for the future, will be entered. This order will give effect to the agreement of the parties thereto insofar as the agreement shall propose rates which the Commission finds are just and reasonable. In this regard, it is important to bear in mind that the Commission and its Staff have before them voluminous current evidence on both costs and supply in the proceeding it instituted in 1969 (AR 69-1) and which is companion to the proceedings in this case.

Following the issuance of the new order, most of the issues now presented on this vast record which so deeply concerned the court below and which were treated at length in its 70 page opinion undoubtedly will have disappeared from the case. The issues contested on the new record, if any, undoubtedly will be different or much more narrow. Further, the intermediate appeal, if any, from that order to the Court of Appeals may resolve all such issues and, in any event, will give this Court the benefit of the consideration of the new issues by the court below.

In these circumstances, it is understandable that many parties contend that all petitions for writs of certiorari should be denied. Nevertheless, we submit that the disposi-

tion of the case suggested in our petition for a writ of certiorari (No. 682) is the appropriate action for this Court to take. Thus far, the Commission has not yet entered an order, as prayed by this petitioner and others, reopening the proceedings in this case. While the settlement proposal gives every practical assurance that a new order will be entered, particularly in view of the leadership of the Commission's Staff in achieving an agreement, it is still *possible* for the Commission, under the judgment of the court below, to take no further action. This would be contrary to law and catastrophic to gas consumers and the gas industry. Since, on this unusual record, this possibility still exists, we submit that the appropriate action for this Court to take is to grant all petitions for writs of certiorari and summarily remand the case to the court below, with instructions to that court to supplement its judgment by directing the Commission to reopen the case and proceed to such orders as it deems in the public interest. Such disposition of the case will preserve to each party its right to have reviewed by the Court of Appeals or by this Court any question now presented, either on this record or, if still relevant, on the expanded record upon which the new order is based.

Of course, if prior to this Court's action on the petitions for writs of certiorari herein, the Commission should enter order reopening these proceedings, then, we would submit,

the appropriate action for this Court would be to deny all petitions for writs of certiorari at this premature stage of the case.

Dated: October 14, 1970.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

The within brief in opposition has been served in accordance with Rule 33 by mailing three (3) copies thereof, air mail, postage prepaid, to all counsel of record and to the Solicitor General of the United States this 13th day of October, 1970.

*An Attorney for Respondent*

**(Appendices Follow)**

## *APPENDIX A*

### *United States of America*
### *Federal Power Commission*

Before Commissioners: John N. Nassikas, Chairman; Lawrence J. O'Connor, Jr., Carl E. Bagge, John A. Carver, Jr., and Albert B. Brooke, Jr.

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|---|---|
| Area Rate Proceeding, *et al.* (Hugoton-Anadarko Area) | Docket Nos. AR64-1, *et al.* |

OPINION NO. 586

OPINION AND ORDER DETERMINING JUST AND REASONABLE RATES FOR NATURAL GAS PRODUCED IN THE HUGOTON-ANADARKO AREA

(Issued September 18, 1970)

Nassikas, Chairman:

1. By its order of November 27, 1963, 30 FPC 1354, 28 Fed. Reg. 12,645, the Commission undertook to determine the just and reasonable prices for gas sold in interstate commerce by independent producers of natural gas from the Hugoton-Anadarko area. After hearings held jointly in this proceeding and in *Texas Gulf Coast Area Rate Proceeding,* AR64-2, a proposed initial decision by Presiding Examiner Max L. Kane was issued on September 16, 1968. Exceptions were filed by participants listed in Appendix A to this Opinion and Order.

2. On May 24, 1968, a "settlement" proposal was filed by a group of producers. Opposition to this proposal was filed by the Public Utilities Commission and State of California (California), a group of California distributors and the cities of Chicago, Los Angeles, San Francisco, and Denver

and the Public Service Commission of the State of Colorado. On October 31, 1969, the Commission heard joint oral argument in this proceeding and the *Texas Gulf Coast Area Rate Proceeding*. On January 29, 1970, after extended settlement conferences, a new settlement proposal was filed, formally opposed only by California,[1] Chicago and Denver. American Public Gas Association, an association of approximately 200 municipal distributors, joined in Denver's opposition.[2]

*The Initial Decision*

3. The initial decision was issued prior to our Opinions and Orders in the *Southern Louisiana Area Rate Proceeding*, 40 FPC 530, 41 FPC .... Examiner Kane ably summarized the evidence concerning characteristics of the Hugoton-Anadarko area, where gas is divided between the ancient, shallow, low-pressure Hugoton-Panhandle Field and the so-called Other Fields, which are newer, deeper and of higher pressure than the Hugoton-Panhandle Field. The initial decision established one set of prices for "new gas" from all fields and "old gas" from the Other Fields and another set of prices for "old gas" from the Hugoton-Panhandle Field.[3]

4. Base area rates for new gas and old Other Field gas (at 14.65 psia) at the wellhead were fixed by Examiner Kane

1. California consumers are concerned with between seven and nine percent of the gas sold in the interstate market in the Hugoton-Anadarko area.

2. The American Public Gas Association had filed neither exceptions nor answers to exceptions and had not participated to any extent in the hearings, although it was a formal intervenor.

3. "New gas" is gas-well gas, or residue gas derived therefrom sold under contracts dated on or after January 1, 1961; "old gas" is gas-well gas sold under contracts dated before January 1, 1961, or residue gas derived therefrom, and all casinghead gas or residue gas derived therefrom regardless of the date of the contract.

at 17.5 cents per Mcf in Texas Railroad District No. 10, 17.1 cents per Mcf in Oklahoma, and 16.3 cents per Mcf in Kansas. The base area rate for old gas from the Hugoton-Panhandle Field (at 14.65 psia) at the wellhead was 12.1 cents per Mcf in Texas District No. 10, 11.9 cents per Mcf in Oklahoma and 11.3 cents per Mcf in Kansas. Under the initial decision, a gathering charge was allowed, one cent for gas from the Other Fields in Texas District No. 10, 1.1 cent from the Other Fields in Oklahoma and Kansas, and 1.9 cent for gas from the Hugoton-Panhandle Field in all three states.

5. Quality and delivery pressure standards were established and a minimum rate was set. A moratorium of 2½ years was imposed, and refunds (plus interest) were ordered of all amounts collected in excess of the applicable area rates and subject to refund in consolidated Section 4(e) cases, such refunds however, to be retained or escrowed by the producer until suitable flow-through arrangements were approved.

*The Settlement Proposal*

6. The settlement proposal of January 29, 1970, was joined in by 27 independent gas producers.[4] The proposal is appended to this order as Appendix B. On February 3, 1970, the Commission noticed the proposal and provided for the filing of comments or objections by March 2, 1970 (35 Fed. Reg. 2753). Statements of support were received from twelve producers, Texas Independent Producers & Royalty Owners Association (TIPRO), Oklahoma Independent Petroleum Association (OIPA), seven pipelines

4. All participants were represented at one or more of the settlement conferences except California, Los Angeles and San Francisco.

(purchasers of 91.26 percent of the gas sold in the area subject to our jurisdiction),[5] the Northern Distributor Group[6] and Northern Illinois Gas Company (distributor to over a million customers in Illinois, including suburbs of Chicago). The producers proposing and supporting the settlement were responsible for 71.2 percent of the gas sold to interstate pipeline companies in 1968 in the Hugoton-Anadarko area (87.8 percent in the Panhandle-Hugoton Field and 55.9 percent in the Other Fields).[7] No producer or pipeline opposed the proposed settlement, although Cities Service Gas Company contended three rate schedules should not be included for reasons peculiar to those sales.

7. Opponents of the original settlement who did not oppose the amended settlement included the California Distributor Group, Los Angeles, San Francisco, and the Public Service Commission of Colorado.

*Specific Objections to the Settlement Proposal*

8. Chicago opposed the settlement proposal as lacking record support for the proposed rates. Denver-APGA made the same objection and urged additionally that it "would

5. Northern Natural Gas Company, Transwestern Pipeline Company, Colorado Interstate Gas Company, Cities Service Gas Company, Panhandle Eastern Pipe Line Company, Michigan Wisconsin Pipe Line Company and Natural Gas Pipeline Company of America. See Appendix C.

6. Central Natural Gas Company, Central Telephone & Utilities Corporation (formerly Western Power & Gas Company), Iowa Electric Light & Power Company, Iowa-Illinois Gas & Electric Company, Iowa Power and Light Company, Iowa Public Service Company, Metropolitan Utilities District of Omaha, Minneapolis Gas Company, Northern States Power Company (Minnesota), Northern States Power Company (Wisconsin) and Northwestern Public Service Company, all of which are Upper Midwest distributors.

7. These producers and their 1968 jurisdictional sales are listed in Appendix E.

grant the producers 1.2 to 3 cents per Mcf in excess of a just and reasonable rate", that the elimination of all refunds prior to 1961 and of thirty percent of the refunds for 1961 and 1962 was not justified, and that the provision for a one cent ceiling rate escalation July 1, 1972, would make the moratorium "anti-consumer."

9. California objected to the absence of specific quality standards from the settlement proposal (except for gas under contracts dated on or after November 1, 1969), the higher price allowed gathered gas, and said the settlement rates "do not appear to be capable of being justified in terms of costs incurred, including an allowance for a fair rate of return" (p. 12). California also objected to the failure to require full refunds and to "future price escalation . . . without regulatory scrutiny. . . ." California contended also that the Commission lacks authority to approve a settlement proposal when opposition is filed to it, but must instead decide the case upon the merits.

10. In its *Permian* decision,[8] the Supreme Court stated:

> ". . . Area regulation of producer prices is avowedly still experimental in its terms and uncertain in its ultimate consequences; it is entirely possible that the Commission may later find that its area rate structure for the Permian Basin requires significant modification."
>
> * * *
>
> "We assume that the Commission will continue to examine both the premises of its regulatory methods and the consequences for the industry's future of its rate making orders."
>
> * * *

8. 390 U.S. 747 (1968).

"We do not suggest that the Commission need not continuously evaluate the revenue and other consequences of its area rate structures. A principal advantage of area rate regulation is that it centers attention upon the industry's aggregate problems, and we may expect that, as the Commission's experience with area rate regulation lengthens, it will treat these important questions more precisely and efficaciously."

* * *

"The Commission cannot confine its inquiries either to the computation of costs of service or to conjectures about the prospective responses of the capital market; it is instead obliged at each step of its regulatory process to assess the broad requirements of the broad public interests entrusted to its protection by Congress. Accordingly, the 'end result' of the Commission's orders must be measured as much by the success with which they protect those interests as by the effectiveness with which they 'maintain . . . credit and . . . attract capital.'"

* * *

". . . we see no objection to [the Commission's] use of a varity of regulatory methods. Provided only that they do not together produce arbitrary or unreasonable consequences, the Commission may employ any 'formula or combination of formulas' it wishes, and is free 'to make the pragmatic adjustments which may be called for by particular circumstances.'"

* * *

11. In *Southern Louisiana Area Rate Cases*, ..... F.2d ....., the Court of Appeals for the Fifth Circuit stressed the need for the Commission to review its cost computations in the light of demand, supply and the effect of the prices established. The Court of Appeals also dealt with the

settlement offer rejected by the Commission in Southern Louisiana, and Commissioner Carver's dissent advocating the adoption of that settlement proposal as being within the "zone of reasonableness":

> "In light of the imprecision of costs, broad support for the settlement, evidence that the market has at least a procompetitive structure, and cumbersome nature of price regulation, it may be that the settlement arguments advanced by Commissioner Carver are persuasive. In this case, the settlement is championed by the producers, and before the Commission it was supported by gas distributors (whom we classify as representing consumer interests) accounting for over 87 percent of delivery volume . . . . Widespread use of the settlement technique would result in negotiation pitting market forces against each other on an aggregate scale, overseen by the Commission."

12. In *Michigan Consolidated Gas Company, et al. v. F.P.C.*, 283 F.2d 204 (CADC, 1960), cert. denied, 364 U.S. ....., where the Commission had refused to consider a proposed settlement because of objection by one of the principal parties, the court remanded the case and required the Commission to consider the proposed settlement on its merits. The court said:

> "Even assuming that under the Commission's rules Panhandle's rejection of the settlement rendered the proposal ineffective *as a settlement*, it could not, and we believe should not, have precluded the Commission from considering the proposal *on its merits*. Indeed, the proposal appears prima facie to have merit enough to have required the Commission at some stage of the proceeding to consider it on its own initiative as an alternative to total abandonment.

* * *

> "Of course, there may be valid objections to the settlement proposal which the Commission has not explained, or which a hearing upon the proposal would reveal. Such considerations may merit modification or total rejection of the proposal. But we think that, since the Commission is charged with the duty of protecting the ultimate consumer from 'exploitation at the hands of natural gas companies.' Federal Power Commission v. Hope Natural Gas, 1944, 320 U.S. 591, 610, 64 S.Ct. 281, 88 L.Ed. 333, it cannot refuse *to consider* a proposal which appears, on its face at least, consistent with that duty." (p. 224)

13. The Commission not only has discretion to give full consideration to a proposed settlement but also a legal obligation to do so.[9]

14. A settlement proposal by virtually all of the area's producers, supported by the pipelines and the distributors conveying the greater part of the interstate gas from the area, commands attention. A resolution of the issues which so many parties are willing to accept reduces the possibility

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9. See also *Cities of Lexington, etc., Ky. v. F.P.C.*, 295 F.2d 109 (CA4, 1961), where the court upheld approval by this Commission of a settlement despite the objection of Lynchburg Gas Company. That company appealed, contending the Commission could not approve the settlement over its objection, but was compelled to decide the case on the merits. The court said:

> "There is nothing in the Administrative Procedure Act which expressly requires unanimous consent of all the participating parties to an agreement of settlement; and to read such a contention into the statute in view of the countless state agencies, municipalities and consumers who may be interested in an administrative proceeding would effectually destroy the settlement provision. In this instance the kind of interest which Lynchburg entered the proceeding to represent was protected by the participation and consent of other parties in like situation. Their consent to the settlement was sufficient basis for the Commission's approval." (p. 121)

of future litigation. Of course the settlement proposal must be considered upon its merits, in the light of existing conditions, but this is quite different from California's insistence that we must ignore the settlement and take up the case on its merits as reflected in a voluminous record of raw evidence.

*The Rate Structure*

15. The initial decision and the settlement proposal provide one set of base area rates for gas from the Hugoton-Panhandle Field and a separate set of higher area base rates for gas from the Other Fields. The settlement proposal provides for a higher area base rate for gas-well gas under contracts executed on or after November 1, 1969. On the merits, we approve these principles.

16. The settlement proposal provides for the same treatment for casinghead gas in the Hugoton-Anadarko area as that provided in Permian and Southern Louisiana, namely pricing it the same as gas well gas of the first vintage. However, a proviso is inserted that if our earlier determination to this effect in *Southern Louisiana* should be modified, equivalent treatment would be expected. This qualification is reasonable and appropriate for adoption here.

*Date of Division*

17. In the *Southern Louisiana Area Rate Proceeding*, the Commission said:

> ". . . The use of the same division date as was used in the Permian Basin will ensure equality of treatment in this respect among producers operating in different pricing areas—a producer should not be penalized by having a later division date exclude its gas from the new gas category solely because he chanced to be in one area rather than another, unless strong and suffi-

cient reasons are shown for the different treatment. Multiplicity of division dates throughout the various areas would complicate the administrative structure of gas prices." *Southern Louisiana Area Rate Proceeding*, 40 FPC 530, 555 (1968), modified in other respects and confirmed, 41 FPC 301, rehearing denied 41 FPC 616 (1969), affirmed .....F. 2d .....(CA5, 1970).

The quoted reasoning applies with equal force here, and in the absence of the amended settlement proposal we would establish October 1, 1968, as the date of division between earlier and later vintages of gas in this proceeding. The settlement proposal's use of November 1, 1969, as the date of division, makes contracts executed in the 13-month interim from October 1, 1968, through November 1, 1969, subject to a base area rate 1.5 cents per Mcf lower than if the date of division were October 1, 1968. An examination of the contracts filed with the Commission and the estimated annual volumes moving thereunder indicates that by our approving the later division date provided in the amended settlement proposal there will be a saving to consumers of approximately seven million dollars during the period of the moratorium provided in the settlement proposal.

*The Wellhead Prices of Other Field Gas Under Contract Before November 1, 1969*

18. In the initial decision detailed computations were made of the nationwide cost of new gas and of the historical cost of Other Field gas in the Hugoton-Anadarko area. The two computations gave approximately the same result. The initial decision therefore established one basic price for all Other Field gas, varied only by the tax differences in the different states: 16.3 cents in Kansas, 17.1 cents in Okla-

24. We do not reach our determination, however, upon a consideration of costs alone. The proposed later vintage prices are approved also as a means of encouraging exploration for and development of additional supplies of gas.

25. The central location of this area makes the discovery and development of its gas particularly desirable. Many of the largest pipelines are largely dependent upon the Hugoton-Anadarko area for major portions of their gas supplies. Gas which is made available in this area can be delivered to major markets with a minimum of delay. To major midwest cities it is vital, and to other widely divergent parts of the country it is scarcely less important. The prices proposed may not solve the gas supply problem, but it is reasonable to expect that prices proposed by the industry itself will assist in moderating supply difficulties. The rate stability here provided will be beneficial to all segments of the industry and to consumers as well.

*The Wellhead Prices for Hugoton-Panhandle Field Gas*

26. A direct computation of the historic cost of Hugoton-Panhandle Field gas-well gas cannot be derived from the evidence of record in this proceeding. It is possible to determine, however, that Hugoton-Panhandle Field gas is less costly than Other Field gas-well gas.

27. Despite the apparently lower costs, the evidence on the development of this field discloses that expensive well replacement programs have become necessary in recent years. The delivery pressure, originally at 440 psig, has been declining over the years and the necessity for compressor installation is becoming more common. Salt water disposal has become an increasing problem in recent years and has contributed to increasing costs.

28. The adoption of the proposed settlement rates will encourage the continuation of these programs and prolong the economic life of the field, which is the largest single accumulation of gas in this country, and the backbone of supply from the Hugoton-Anadarko area. We have previously accepted a 12.5 cents per Mcf rate in the Kansas portion of this field under individual company settlements—the same rate as now proposed. For these reasons, we find the proposed settlement prices for Hugoton-Panhandle gas to be just and reasonable, and in the public interest.

*Proposed Price Escalation of January 1, 1972*

29. The proposed settlement provides that all area rates will be increased by one cent per Mcf on January 1, 1972. We find that this escalation is justified by the increased rate of return which we find should be allowed all vintages of gas.

30. Changes in the economic climate—evidenced, for example, by persistent inflationary trends in the general economy and unusual liquidity pressures on corporate enterprises—have made it apparent that the 12 percent rate of return found adequate by the Commission in 1965 (*Permian*) and 1968 (*Southern Louisiana*) should be adjusted upward. Compared with prime rates of 6 percent to 6¾ percent charged by commercial banks during 1968, the prime rate was raised to 8½ percent in June 1969 and has been at 8 percent since March 1970. Bond interest rates have experienced similar and at times much sharper increases as a result of continued heavy demands for long-term financing.

31. Accordingly, we find that the proposed escalation in rates is just and reasonable in view of the increased rate of return which should be allowed producers from 1969 on-

24. We do not reach our determination, however, upon a consideration of costs alone. The proposed later vintage prices are approved also as a means of encouraging exploration for and development of additional supplies of gas.

25. The central location of this area makes the discovery and development of its gas particularly desirable. Many of the largest pipelines are largely dependent upon the Hugoton-Anadarko area for major portions of their gas supplies. Gas which is made available in this area can be delivered to major markets with a minimum of delay. To major midwest cities it is vital, and to other widely divergent parts of the country it is scarcely less important. The prices proposed may not solve the gas supply problem, but it is reasonable to expect that prices proposed by the industry itself will assist in moderating supply difficulties. The rate stability here provided will be beneficial to all segments of the industry and to consumers as well.

*The Wellhead Prices for Hugoton-Panhandle Field Gas*

26. A direct computation of the historic cost of Hugoton-Panhandle Field gas-well gas cannot be derived from the evidence of record in this proceeding. It is possible to determine, however, that Hugoton-Panhandle Field gas is less costly than Other Field gas-well gas.

27. Despite the apparently lower costs, the evidence on the development of this field discloses that expensive well replacement programs have become necessary in recent years. The delivery pressure, originally at 440 psig, has been declining over the years and the necessity for compressor installation is becoming more common. Salt water disposal has become an increasing problem in recent years and has contributed to increasing costs.

28. The adoption of the proposed settlement rates will encourage the continuation of these programs and prolong the economic life of the field, which is the largest single accumulation of gas in this country, and the backbone of supply from the Hugoton-Anadarko area. We have previously accepted a 12.5 cents per Mcf rate in the Kansas portion of this field under individual company settlements—the same rate as now proposed. For these reasons, we find the proposed settlement prices for Hugoton Panhandle gas to be just and reasonable, and in the public interest.

*Proposed Price Escalation of January 1, 1972*

29. The proposed settlement provides that all area rates will be increased by one cent per Mcf on January 1, 1972. We find that this escalation is justified by the increased rate of return which we find should be allowed all vintages of gas.

30. Changes in the economic climate—evidenced, for example, by persistent inflationary trends in the general economy and unusual liquidity pressures on corporate enterprises—have made it apparent that the 12 percent rate of return found adequate by the Commission in 1965 (*Permian*) and 1968 (*Southern Louisiana*) should be adjusted upward. Compared with prime rates of 6 percent to 6¾ percent charged by commercial banks during 1968, the prime rate was raised to 8½ percent in June 1969 and has been at 8 percent since March 1970. Bond interest rates have experienced similar and at times much sharper increases as a result of continued heavy demands for long-term financing.

31. Accordingly, we find that the proposed escalation in rates is just and reasonable in view of the increased rate of return which should be allowed producers from 1969 on-

wards. The delay of the escalation to July 1, 1972, under the settlement proposal is a provision favorable to consumers.

32. So far as gas under contracts dated on or after November 1, 1969, is concerned we also find that the proposed one cent price escalation is necessary and proper to provide additional incentives to find and commit to interstate commerce the particularly valuable gas from this vital supply area.

*Substantial Off-Lease Gathering*

33. The settlement proposal would provide for a one-cent gathering charge to be added to the wellhead price for Other Field gas that has had substantial gathering by the producer off the lease, a two cents gathering charge for Hugoton-Panhandle Field gas prior to July 1, 1972, and 2.5 cents thereafter. This compares with the Examiner's one-cent gathering allowance for Other Field gas in Texas, 1.1 cent for other field gas in Kansas and Oklahoma, and 1.9 cent for Hugoton-Panhandle gas in all three states.

34. The principal objection to this was advanced by California. California contends that there should be no allowance for gathering at all, arguing that gathering is primarily for the purpose of processing the gas to obtain its liquids, and gathering costs should be ascribed to the liquids rather than to the residue gas.

35. In *Permian* we accepted California's view, but the circumstances were different. In the Permian Basin, two-thirds of the gas produced was casinghead gas, collected to be stripped of its liquids before the residue gas was sold. Gas-well gas in that area was of high pressure; gathering it was not necessary for compression. The principal costs of the gathering systems were attributable to casinghead gas, and therefore were not properly included in gas-well gas costs.

36. In *Southern Louisiana,* we recognized that the cost of such gathering of gas should be included in computing the producers' cost of gas-well gas, which predominated.

37. Gas-well gas also predominates in the Hugoton-Anadarko area. The situation resembles that in *Southern Louisiana* and we find that additional compensation for substantial off-lease gathering is proper since the amount of gathering allowance in the settlement proposal closely approximates the Examiner's determinations. The increase in gathering allowance for Hugoton-Panhandle gas in 1972 is just and reasonable because of the declining pressure in the Hugoton-Panhandle Field, which will increase the cost of gathering and compressing. The increased price will also be an incentive to continued production after the wellhead pressure in the field has been reduced.

38. To the settlement proposal were attached, as Exhibits A-1 and A-2, lists of deliveries nominated for the gathering allowance. We are unable to determine the facts with respect to all these deliveries from the information before us in our files, and with respect to other deliveries which may qualify for the gathering allowance even though they were not included in the lists. Information to establish the pertinent qualifying facts must be furnished either before or at the time of filing the applicable rate schedules, or amendments thereto, in compliance with our present Order if the gathering allowance is to be applicable. In those instances where deliveries were nominated for the gathering allowance, or are hereafter nominated, that portion of any rate or charge attributable to such gathering allowance, and made effective pursuant to the Order herein, shall be charged and collected subject to refund pending the Commission's determination whether such gathering allowance is, in fact, applicable.

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further considered. The effect of the settlement proposal with respect to dehydration, compression and removal of carbon dioxide, although favorable to the producers, is offset by the fact that the settlement proposal will cost the producers a loss of upward Btu adjustments.

*Minimum Rates*

46. Under the proposed minimum rates the gas involved will still be most favorably priced from the point of view of buyer and consumer. We find that the proposed minimum rates are not unreasonable, and that they are in the public interest. See *Permian, supra.*

*Moratorium*

47. The settlement provides for a moratorium on rate increases above the applicable area rates until July 1, 1977. A principal benefit of the settlement proposal is the extended period of relative certainty that it provides, creating an atmosphere of rate stability. While changed circumstances may compel the reopening of some of the matters here determined, we believe a settlement proposed by a large part of the industry and accepted by all of it is less liable to be subjected to constant pressure for change than would a Commission determination imposed without consent. We find that the moratorium provision of the settlement proposal is in the public interest.

*Refunds*

48. The settlement proposal departs from the pattern of previous decided cases by providing for a lesser refund obligation than that which would follow from a strict application of theory. Collections subject to refund and in excess

of the proposed settlement rates agreed upon for contracts in effect prior to 1961 would not be required to be refunded. Seventy percent of such amounts collected in 1961 and 1962 would be refundable, and 100 percent of the amounts collected after 1962.[11] This provision reflects the peculiar situation of Phillips Petroleum Company.

49. After the Supreme Court's decision in the *First Phillips* case, the Commission reinstated its proceedings and instituted separate investigations of the rates of a number of other major producers. The Commission's decision of September 28, 1960, in the remanded *Phillips* proceeding determined that individual company regulation was not feasible and that producer regulation should be accomplished on an area basis, 24 FPC 437, 547. The Commission also found that, based on a 1954 test year, Phillips' costs were $10,000,000 in excess of its revenues, 24 FPC 537, 576. While expressing the view that Phillips costs probably exceeded its revenues at least through 1958, and that a great many of its unconsolidated Section 4(e) proceedings should be terminated, the Commission terminated only the consolidated 4(e) proceedings, except two involving spiral escalation clauses.

50. At the same time that it issued its *Phillips* decision the Commission issued its Statement of General Policy No. 61-1, establishing guideline prices for various pricing areas, and shortly thereafter instituted the Permian area rate proceeding.

51. While the Permian Basin Proceedings were pending, the Commission embarked on an individual company-wide

11. The total refunds required for the period ending December 31, 1969, would be approximately 47 million dollars. The excess amounts collected, and not required to be refunded, would total about 5 million dollars.

settlement program which ultimately resulted in settlement by most of the major gas producers. The rates agreed upon in these settlements were generally consistent with those established by the Statement of General Policy No. 61-1, while the refunds were determined by reference to a cost of service study of the company involved with refunds required of amounts collected in excess of the settlement rates for periods after unit costs equalled unit revenues. As a result of such studies, full refunds were not required except in one instance.[12]

52. Following approval of a number of such major producer settlements, the Commission announced in *Jack W. Grigsby (Operator), et al.*, 32 FPC 529 (1964), that it would extend its settlement program to small producers without recourse to cost data for the computation of refunds, but that 25 percent refunds would be required through 1960, 70 percent for 1961 and 1962 and 100 percent thereafter.

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12. Tidewater Oil Co.
Refunds were not required by the following companies prior to the dates shown:

| | |
|---|---|
| Amerada | July 1, 1960 |
| Atlantic | December 1, 1961 |
| Cities Service Production Co. | July 1, 1960 |
| Gulf | December 1, 1961 |
| Humble | May 1, 1961 |
| Pan American | July 1, 1962 |
| Mobil | December 1, 1962 (except for two rate schedules for which additional refunds were made from 4/1/60 to 12/1/16) |
| Shell | January 1, 1961 |
| Sohio | September 1, 1961 |
| Sun | January 1, 1961 |
| Texaco | January 1, 1961 |
| Texas Gulf | July 1, 1961 |

58. Subsequent to the issuance of *Grigsby*, settlements were approved with respect to other major producers which provided for no refunds to be made prior to January 1, 1961 (Sun), December 1, 1961 (Atlantic), and February 1, 1962 (Pan American).

54. Phillips Petroleum Company did not enter into a company-wide settlement, apparently, because Phillips has extensive gathering facilities in the area and the Commission's Statement of General Policy did not contemplate any addition to guideline rates for such activities. *H. F. Sears, et al.*, 31 FPC 585 (1964). Since the proposed settlement and our determinations recognize the validity of gathering charges in this area, and since Phillips did not enter into a settlement agreement, the major share of potential refunds during the years 1960 and 1963, approximating 80 percent of the total, are the responsibility of Phillips.

55. We find the proposed refund provisions to be in the public interest and fair under the foregoing circumstances.

*Small Producers*

56. The precedents of *Permian* and *Southern Louisiana* are followed, and there is no disagreement by anyone with the settlement proposal in this regard. We agree that this is proper and so find.

*Approval of Settlement Proposal*

57. Having examined each provision of the proposed settlement upon its merits, we find that the proposal as a whole is in the public interest, and should be made the order of this Commission. It is fair to the consuming public, and will promote certainty and stability and reduce administrative burdens by reduction of contested issues. Adoption of the proposal will contribute to obtaining additional supplies of gas from this crucial area, and contribute to co-

operation in the attempt to deal with the problems of gas supply. For all these reasons, the settlement proposal should be adopted.

*Supply and Demand*

58. In determining area rates we have been charged by the Court of Appeals for the Fifth Circuit with predicting the probable demand for gas, determining the desired level of supply and attempting to determine a price which will elicit that level of supply. *Southern Louisiana Area Rate Cases, supra.* The court noted that this task was difficult, but said it must nevertheless be attempted by the Commission.

59. All major sources of energy in the United States are currently in short supply. Brown-outs have already occurred in some electric utility distribution areas. Restrictions on gas use have been imposed by distributors in a number of areas and are being considered in others. The stock-pile reserves of coal for electric utilities are below the level considered by the industry to be a safe operating margin. The installation of nuclear power plants has progressed more slowly than was forecast and it now appears that nuclear power will not be able to ease the increasing demand on fossil fuel for many years. Domestic oil reserves are declining. Low-sulphur coal and oil are in short supply. Desulphurization facilities are lagging behind projected demand to meet stringent air pollution standards, destined to grow more stringent in several major urban areas. Pipelines are unable to obtain the desired supplies of natural gas. In 1968, according to the statistics of the AGA, the national findings of natural gas fell below production. This occurred again to a greater degree in 1969, when only about 8.3 trillion cubic feet were added to reserves while production mounted to 20.6 trillion.

60. The actual growth in demand for gas as reported by the Future Requirements Committee (FRC)[13] in September 1969, was 4.2% in 1965, 6.9% in 1966, 6.5% in 1967, and 9.1% in 1968. In September 1969, FRC estimated the growth rate for 1969 as 7.4%, for 1970 as 6.1% and for 1971 as 5.3%. For the 1970-75 period the average annual growth rate was estimated at 4.3% compounded annually, from 1975 to 1980 at 2.8%, from 1980 to 1985 at 2.9% and from 1985 to 1990 at 3.1%. These growth rates were based upon a survey of distributors throughout the country conducted by the FRC. Each distributor was asked to make projections from its own areas based on anticipated population growth and trends in demand based on experience. FRC then compiled all the various predictions to produce its estimates for the future. To obtain production necessary to meet these projected increases would mean that the 20.6 trillion cubic feet production of 1969 would have to increase to about 21.9 trillion in 1970, 23.1 trillion in 1971, and 27.0 trillion in 1975.

61. The FRC figures have customarily been on the conservative side.[14] Virtually all predictions as to energy consumption in the past few years have proven swiftly to be gross underestimates. The Commission Staff Report on National Gas Supply and Demand (September 1969) indicates an average annual growth in demand of about six percent (compounded) since 1964. When projected into the

13. The Committee consists of 26 members drawn from pipelines (11), distributors (6), producers (4), government (5), plus two *ex officio* members from the University of Denver.

14. It has been noted that the FRC's compilation is based upon data furnished by local distributors. The predictions of local distributors as to expected demands upon them have proved in recent years to be not only too low but very much too low. Independent and industry surveys, and the witnesses who have testified in area rate cases as to the probable demand for gas have unanimously under-estimated the growth in demand, some by 200 percent. The predictions of demand for coal and oil have also been proven to be far short of the reality.

future this average annual growth would result in substantially higher demands than those projected by FRC.

62. The largest single year's addition to natural gas reserves in the United States took place in 1956 when it reached 24.7 trillion cubic feet.[15] This was also a year of the great activity in domestic oil exploration and development in part engendered by disruption of the supply of foreign oil. In no later year have total reserve additions exceeded 21.1 trillion cubic feet, the level in 1965 and 1967. We may fairly predict then that the production of natural gas which reached 20.6 trillion cubic feet in 1969 will shortly reach a level above that of any past year's additions to reserves. With declining gas reserves and an increasing disparity between demand and available supply, we are confronted with the unpleasant prospect that consumption of natural gas must be curtailed or end use controls imposed unless additional sources of supply can be found or alternative sources of energy developed to meet demand. There is little prospect that alternative energy sources will reduce the demand for gas in the next decade.

63. The evidence shows that the demand for gas has risen beyond all expectations of a few years ago and that it will rise within a few years to a level that will strain or even exceed the capacity of the industry to meet. This will not mean that those presently using gas will find none available. It does mean that some of those who want to begin to use gas will not be able to do so and that some of those who want to sell gas will not be able to get all they want for all their customers. Incremental supplies will be limited.

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15. While reserve additions are extremely inaccurate as a measure of findings in any given year, this maximum figure is almost certainly not too high. In general, statistics as to findings must be averaged over several years to offset the inaccuracies in particular years.

64. The situation in the Hugoton-Anadarko area is tied closely to that of the nation as a whole. This area is centrally located. While the greater part of its gas flows northeasterly to the Upper Midwest it could also be used to supply both the East Coast and the Far West. Pipelines which would normally obtain gas from this area have been compelled to go further afield to the Permian Basin, Southern Louisiana, the Texas Gulf Coast and Other Southwest Areas. The demand upon the Hugoton-Anadarko Area may fairly be considered in terms of the national demand although, if anything, the proportionate demand upon this area would exceed that of the nation as a whole. As the Hugoton-Panhandle Field depletes, new Other Fields must replace it if the flow of gas is to continue at present levels.

65. There is no direct evidence in this proceeding as to what relationship a particular price might have to new gas supplies. Since price is one of the important factors bearing on supply, it is reasonable, therefore, to anticipate greater supplies of gas from an increased level of rates.

*New Rate Schedule, Rate Change and Quality Statement*

66. In this proceeding the Commission provides for a new and simplified filing procedure. In the past, a producer whose rate was in excess of the applicable area rate was required to make one filing setting forth the reduced rate and a separate filing of a quality statement. In the current area rate proceeding we have provided for a single filing in place of the two formerly required. The form set forth as Appendix D will satisfy the requirements of both compliance filing and the quality statement filing, thus simplifying the administrative process and reducing the volume of paper work of producers and of this Commission. It is our intention that the use of this simplified combined statement will be extended to other areas.

# COMPARISON OF PROPOSED SETTLEMENT WELLHEAD RATES WITH INITIAL DECISION, GUIDELINE AND IN-LINE RATES

(All rates at cents per thousand cubic feet at 14.65 psia)

| | Proposed Settlement | | | Initial Decision | | Guideline[1] | | In-line[2] |
|---|---|---|---|---|---|---|---|---|
| | Contracts Before — November 1, 1969 — | | Gas-Well Contracts on or after Nov. 1, 1969 (All Fields) | Hugoton-Panhandle Field Contracts before 1961 | Other Fields and Hugoton-Panhandle Field Gas-Well Contracts after 1960 | Increase for Contracts before Sept. 28, 1960 | Initial Price, Temporary Certificates | |
| | Hugoton-Panhandle Field | Other Fields | | | | | | |
| Kansas | 12.50¢ | 17.50¢ | 19.00¢ | 11.3¢ | 16.3¢ | 11.0¢ | 16.0¢ | — |
| Oklahoma-Panhandle | 13.25 | 18.50 | 20.00 | 11.9 | 17.1 | 11.0 | 17.0 | 17.0 |
| Oklahoma-Anadarko (except Carter-Knox Field | 13.25 | 18.50 | 20.00 | 11.9 | 17.1 | 11.0 | 15.0 | 15.0 |
| Carter-Knox Field | 13.25 | 18.50 | 20.00 | 11.9 | 17.1 | 11.0 | 16.8 | — |
| Texas | 13.50 | 19.00 | 20.50 | 12.1 | 17.50 | 11.0 | 17.0 | — |

1. Guideline rates were established by Statement of General Policy, No. 61-1, September 28, 1960. The Commission there stated that increases in rates up to 11 cents per Mcf would not be suspended. Higher increases would be suspended and thereafter collected subject to refund if the area rates were found to be lower. Temporary certificates would issue at the various rates specified for particular areas or sub-areas, subject to refund if later found to exceed the in-line rates. Guidelines were not ceilings, however; any producer might file for any higher rate permitted by its contract subject to refund if the area rate was found to be lower.

2. In-line prices are the initial rates at which permanent certificates are issued, determined after a hearing. They are not subject to refund unless the Commission so provides in a particular case. *F.P.C. v. Sunray DX Oil Co., et al.*, 391 U.S. 9, 24 (1968). They are not ceilings; after the suspension period any producer may file for any higher rate permitted by its contract, subject to refund (down to the in-line rate) if the area rate is found to be lower. In-line prices are established only for contracts of the particular years for which a determination is made in a given case (for example, 1959-1963 in the Oklahoma-Anadarko sub-area; see *Edwin L. Cox, et al.*, 32 FPC 1301 (1964)).

## FURTHER FINDINGS AND ORDER

Upon consideration of the entire record in this proceeding, which includes public notice, public hearing with opportunity for the submission of oral and documentary evidence, for cross-examination and for the submission of rebuttal evidence, initial decision by an examiner, exceptions thereto, and oral argument before the Commission, *the Commission further finds:*

(1) Each of the respondents[16] listed in Appendix A to this decision is, and at the time of all past sales with which we are here concerned was, a "natural-gas company" within the meaning of the Natural Gas Act and is engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption subject to the jurisdiction of this Commission.

(2) Past, present and proposed sales of natural gas to which the order herein applies are subject to the jurisdiction of this Commission.

(3) Rates for all sales of natural gas, subject to the jurisdiction of the Commission by the producers in the Hugoton-Anadarko area that are above the applicable area rates prescribed herein, have not been shown to be just and reasonable or otherwise lawful under the provisions of the Natural Gas Act and should be disallowed, and refunds should be required as hereafter provided.

(4) The just and reasonable rates for past, present and proposed sales of natural gas to which this order applies are the applicable area rates set forth in ordering paragraph (A) below.

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16. Where the term "respondents" is used in the finding and ordering paragraphs hereinafter set forth, it is to be regarded as referring to all named respondents in the Commission orders issued in this case, and to all parties on whose behalf such named respondents have filed FPC gas rate schedules for sales of gas produced in the Hugoton-Anadarko area.

(5) Contracts providing for rates in excess of the applicable just and reasonable rates determined herein are in that respect unjust and unreasonable.

(6) It is necessary and appropriate to carry out the provisions of the Natural Gas Act that the Commission adopt the orders and regulations prescribed herein.

(7) Except as herein granted the exceptions to the initial decision and proposed order should be denied.

The Commission, acting pursuant to Sections 4, 5, and 16 of the Natural Gas Act (52 Stat. 822, as amended, 823, 830; 15 U.S.C. 717c, 717d, 717o) and Sections 553, 556 and 557 of the United States Code (the Administrative Procedure Act, 60 Stat. 238, 239, 241, 242, as codified September 6, 1966 by 80 Stat. 383, 384, 386, 387) *orders:*

(A) Part 154 of the Commission's Regulations Under the Natural Gas Act, Subchapter E, Chapter I, Title 18 of the Code of Federal Regulations (18 CFR 154) is amended by adding a new section 154.106 reading as follows:

Part 154—Rate Schedules and Tariffs

* * * * *

§154.106 Area rates—Hugoton-Anadarko area.

(a) From and after October 1, 1970, the effective date of Opinion No. 586, Docket No. AR64-1, *et al.*, .....FPC....., and prior to July 1, 1977, no rate or charge made, demanded or received under a rate schedule filed pursuant to this Part for gas produced in the Hugoton-Anadarko area shall exceed the applicable area rate prescribed by this section except in compliance with a specific order of the Commission.

(b) Applicable area rate means the base area rate established in paragraph (c) adjusted to the extent required by paragraphs (d), (e) and (f).

(c) *The Base Area Rates.* The following base area rates per Mcf (at 14.65 psia) are hereby established and

subject to the adjustments provided in paragraphs (d), (e) and (f):

(1) Gas sold under contracts dated prior to November 1, 1969:

(i) For all gas produced in the Panhandle and Hugoton Fields:[17]

(aa) Prior to July 1, 1972:

12.50 cents in Kansas
13.25 cents in Oklahoma
13.50 cents in Texas

(bb) On and after July 1, 1972:

13.50 cents in Kansas
14.25 cents in Oklahoma
14.50 cents in Texas

(ii) For all gas produced from fields or reservoirs other than the Panhandle and Hugoton Fields:

(aa) Prior to July 1, 1972:

17.50 cents in Kansas
18.50 cents in Oklahoma
19.00 cents in Texas

(bb) On or after July 1, 1972:

18.50 cents in Kansas
19.50 cents in Oklahoma
20.00 cents in Texas

(2) Gas sold under contracts dated on or after November 1, 1969.

(i) Gas well gas:

(aa) Prior to July 1, 1972:

19.0 cents in Kansas
20.0 cents in Oklahoma
20.5 cents in Texas

17. The Hugoton fields in Kansas, Oklahoma and Texas are limited to the producing zones of the Chase group in the Permian System. The Panhandle fields in Texas include the Panhandle Lime of the Wichita group, the Herrington zone of the Chase group, the Granite Wash formation of Permian and Pennsylvania Age, and the Red Cave formation overlying the Wichita group.

(bb) On or after July 1, 1972:

20.0 cents in Kansas
21.0 cents in Oklahoma
21.5 cents in Texas

(ii) Casinghead gas:[18]

(aa) Prior to July 1, 1972:

17.5 cents in Kansas
18.5 cents in Oklahoma
19,0 cents in Texas

(bb) On or after July 1, 1972:

18.5 cents in Kansas
19.5 cents in Oklahoma
20.0 cents in Texas

(d) *Quality Standards and Adjustments to the Base Area Rate.*

(1) For gas sold under contracts dated prior to November 1, 1969, quality standards and resulting adjustments to the base area rate shall be in accordance with the provisions of the particular contract with respect to contract rates.[19]

(2) For gas sold under contracts dated on or after November 1, 1969, quality standards and resulting adjustments to the base area rate shall be in accordance with the provisions of the particular contract with respect to contract rates, except:

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18. In the event that it is determined by a final order, no longer subject to judicial review, that casinghead gas in the Southern Louisiana area shall receive the same ceiling price as gas-well gas of comparable vintage, the ceiling prices set out hereunder for gas-well gas produced in the Hugoton-Anadarko area and contracted for on or after November 1, 1969, shall apply to casinghead gas contracted for on or after November 1, 1969, prospectively from the date of such final order in the Southern Louisiana Area Rate Proceeding.

19. For those sales certificated by Opinion 390, 29 FPC 1175, there shall be a Btu adjustment proportionately upward and downward from 1,000 Btu, similar to that provided in (2) (iv) hereof.

(i) *Hydrogen Sulphide*—The gas shall contain not more than one grain of hydrogen sulphide per one hundred cubic feet of gas at 60° F and 14.73 psia (10 gr. per Mcf).

(ii) *Total Sulphur*—The gas shall contain not more than 20 grains of total sulphur per one hundred cubic feet of gas at 60° F and 14.73 psia (200 gr. per Mcf).

(iii) *Carbon Dioxide*—The gas shall contain not more than 3 percent by volume of carbon dioxide.

(iv) Btu Adjustment—For gas with more than 1,000 Btu's per cubic foot, at 60° F and 14.73 psia, upward adjustments shall be made on a proportional basis from a base of 1,000 Btu's. For gas with less than 1,000 Btu's per cubic foot, at 60° F and 14.73 psia, downward adjustments shall be made on a proportional basis from a base of 1,000 Btu's.

(e) *Adjustment for Substantial Off-Lease Gathering.* Where delivery of the gas is made after substantial off-lease gathering by the producer, whether at a plant tail-gate or at a central point, the applicable area rate shall be adjusted upward above the base area rate:

(1) For gas produced in the Panhandle and Hugoton Fields:

(i) Prior to July 1, 1972, 2 cents per Mcf.

(ii) On or after July 1, 1972, 2.5 cents per Mcf.

(2) For gas produced from fields or reservoirs other than the Panhandle or Hugoton Fields, 1 cent per Mcf.

(3) In all instances where deliveries are nominated for the gathering allowance, or claim to the same is otherwise made, that portion of any rate or charge attributable to such gathering allowance, and made effective pursuant to the Order herein, shall be charged and collected subject to refund, with interest at 7 percent per annum, pending the Commission's determination, whether such gathering allowance is, in fact, applicable.

(f) *Adjustments for Tax Changes.* The applicable area rate shall be adjusted upward by 75 percent of the amount of any applicable new state or federal production, severance or similar taxes, effective subsequent to January 29, 1970, and shall be adjusted upward by 75 percent of the amount of any increase in existing state or federal production, severance or similar taxes, subsequent to January 29, 1970, and shall be adjusted downward by 75 percent of the amount of any decrease in existing state or federal production, severance or similar taxes subsequent to January 29, 1970.

(g) The Hugoton-Anadarko area consists of the State of Kansas, Texas Railroad Commission District No. 10, and the Oklahoma counties of Cimarron, Texas, Beaver, Harper, Woodward, Ellis, Woods, Alfalfa, Grant, Major, Garfield, Roger Mills, Dewey, Custer, Blaine, Kingfisher, Canadian, Beckham, Washita, Caddo, and Grady, and that part of Stephens County lying within Township 2 North, Range 4 and 5 West.

(h) Prior to July 1, 1977, any seller seeking to charge rates in excess of the applicable area rate or requesting a change in the applicable area rate must file a petition for waiver or amendment of this section pursuant to Section 1.7(b) of the Commission's Rules of Practice and Procedure (18 CFR 1.7(b)) fully justifying the relief sought in the light of this opinion and order. Prior to July 1, 1977, the seller may not file any rate increase in excess of the applicable area rate herein prescribed unless and until the Commission grants the petition.

(B) *Minimum Rates*

(1) Minimum rates per Mcf for natural gas produced in the Hugoton-Anadarko area are hereby established (at 14.65 psia) as follows:

10.0 cents in Kansas
10.5 cents in Oklahoma
10.75 cents in Texas.

For sales made after substantial off-lease gathering by the producer, or at a plant tailgate, the applicable minimum rate shall be adjusted upward by adding the applicable amount of adjustment provided for substantial off-lease gathering.

(2) All respondents making jurisdictional sales of gas produced within the Hugoton-Anadarko area are hereby authorized to apply for increases to the minimum rates provided in subparagraph (1) hereof. Increases to the established minimum rate will be granted notwithstanding contractual provisions to the contrary which are hereby modified *pro tanto*.

(C) Section 157.40 of the Commission's Regulations under the Natural Gas Act, Subchapter E, Chapter I, Title 18 of the Code of Federal Regulations (18 CFR 157.40) is amended by revising paragraph (d) to read as follows:

§ 157.40 Small producer certificates of public convenience and necessity.

* * * * *

(d) *Availability to small producers operating in the Southern Louisiana and Hugoton-Anadarko areas.* Small Producer Certificates are also available to Small Producers operating in the Southern Louisiana or Hugoton-Anadarko areas with respect to their small producer sales in those areas. Small Producer Certificates will authorize sales at prices no higher than the applicable area rates specified for the Southern Louisiana area in § 154.105 and specified for the Hugoton-Anadarko area in § 154.106. Applications for Small Producer Certificates in either or both areas shall contain the information required in subparagraphs (2), (3) and (4) of § 157.40(b).

(D) The applicable area rate as defined in ordering paragraph (A) above, shall be effective from and after

October 1, 1970, and any amounts collected in excess thereof on or after that date shall be subject to refund plus interest at 7 percent. In addition, with respect to the rates involved in the Section 4(e) proceedings set out in Appendix A, the applicable area rate as defined in paragraph (A) above, shall be effective from the date such Section 4(e) rates were collected subject to refund and all amounts collected under those Section 4(e) rates prior to the effective date of this Opinion in excess of the applicable area rate shall be subject to refund, plus interest at the rate specified in the respective Section 4(e) proceeding, in accordance with the provisions of ordering paragraphs (F) and (G) herein; provided, however, that with respect to such 4(e) dockets no refunds are required below the rate allowed in a final, unconditioned permanent certificate previously granted for such sale, no refunds are required of amounts collected prior to January 1, 1960, and only 70 percent of amounts collected in excess of the applicable rate in 1961 and 1962 is required to be refunded.

(E) On or before November 2, 1970, each respondent shall file a supplement to each applicable rate schedule, effective as of October 1, 1970, reflecting any reductions required to bring any or all of its rates into conformity with the applicable base area rate established by ordering paragraph (A) herein. The timely filing of a completed statement in conformity with Appendix D hereto shall constitute compliance with this paragraph (E).

(F)(1) Each person having on file with this Commission a rate schedule with regard to gas produced or sold within the Hugoton-Anadarko area, or hereafter filing such a rate schedule (including a contract or amendment adding acreage or new reserves) shall, with regard to such rate schedule or amendment, file on or before November 2, 1970,

or within 90 days from the date of first delivery under the rate schedule or amendment, whichever is later, a statement in conformity with Appendix D hereto. All statements herein required shall be signed by both the seller and the purchaser. If the seller and the purchaser are unable to agree upon any or all of the particulars entering into the computation of the applicable area rate, the seller shall file the statement herein required which shall indicate the absence of agreement and supply the information required to compute the applicable area rate as well as the contentions of the parties with respect to the quality and amount of the adjustment for any item in dispute. The purchaser may file a separate statement setting forth its views within the period herein provided.

(2) The statement filed hereunder which reflects full agreement between seller and purchaser shall be deemed accepted by the Commission unless the Commission, within 120 days after such filing, shall otherwise order. In the event of disagreement between the seller and purchaser or, where the Commission otherwise determines that the statement filed is inconsistent with the provisions of ordering paragraph (A) herein, the Commission will after appropriate proceedings, prescribe the applicable area rate to be applied as of October 1, 1970.

(3) Any respondent will be exempt from filing the statement required by subparagraph (1) hereof for any sales which are "small producer sales" as defined in Section 157.40 with respect to sales in the Hugoton-Anadarko area in accordance with Section 157.40(d) prescribed herein if a producer seeks to qualify thereunder. If the Commission subsequently finds that such a producer does not qualify as a small producer such applicant shall be required to file the statement required by subparagraph (1) hereof within 90 days after any such Commission finding.

(G) *Refund Reports.* On or before November 2, 1970, a refund report shall be filed with this Commission in triplicate, and one copy served on the buyer, by each respondent involved in one or more of the Section 4(e) proceedings set out in Appendix A to this decision and as to which refunds are required under the terms of this decision. Within 20 days from the filing of the refund report the buyer shall file its written concurrence or disagreement with such report. The report shall set forth the following information (if more than one rate schedule is involved the respondent shall supply the information for each schedule separately):

(i) The rate collected during the period subject to refund and the periods during which each rate was collected.

(ii) The volume of gas sold at each such rate.

(iii) The difference between the total amount collected during the period subject to refund and the amount that would have been collected at the applicable area rate as defined herein subject to the provisos of ordering paragraph (D).

(iv) The computation of the applicable area rate and the basis for any difference between it and the base area rate.

(v) The interest, at rates as specified in each Section 4(e) proceeding, on the above refundable excess revenues, subject to the limitation by Section 154.102(f) of the Commission's Regulations Under the Natural Gas Act. The interest shall be calculated to September 1, 1970.

(H) *Treatment of Refunds.* Each respondent shall retain the amounts shown in the report required under ordering paragraph (G) subject to further order of the Commission directing the disposition of those amounts. If a respondent elects to commingle these retained refunds with

its general assets and use them for its corporate purposes, it is authorized so to do after notice to the Commission; and it shall pay interest thereon at the rate of 8 percent per annum on all funds thus available from the effective date of this order to the date on which they are paid over to the person ultimately determined to be entitled thereto in a final order of the Commission. If a respondent elects to deposit the retained refunds in a special escrow account, the respondent shall make such deposit and shall tender for filing on or before the date of the filing of the refund report an executed Escrow Agreement, or a certificate attesting to the fact that it has executed such an agreement, in the form provided by Section 250.12 of Part 250 of the Regulations Under the Natural Gas Act (18 CFR Part 250).

(I) These proceedings shall remain open for such further action as may be necessary with respect to individual respondents and such other action as may be necessary in the premises.

(J) Except as herein granted the exceptions to the initial decision and proposed order are hereby denied.

(K) The effective date of this order is October 1, 1970.

(L) Twenty-five copies of any application for rehearing or petitions for reconsideration shall be filed with the Commission in addition to the copies served on the parties to this proceeding.

(M) The Secretary shall cause prompt publication of the findings and ordering paragraphs, together with notice of the availability of this entire Opinion, to be made in the Federal Register.

By the Commission.

(SEAL)

Kenneth F. Plumb,
Acting Secretary.

## *APPENDIX B*

### Excerpt from pages 10 and 11 of Opinion No. 565-A

THE REFUND

22. In our original opinion and order of August 6, 1969, we provided for a refund based on the in-line price of 20 cents for deliveries from the commencement of operations in the Rayne Field until October 1, 1968. For the period from this date until the time of payment the refund was to be based on the Southern Louisiana area rate of 18.5 cents per Mcf for 1959 vintage gas.

23. At the present time the question of a refund must be approached in the light of the present state of area price regulation in the Southern Louisiana area. On review of our *Southern Louisiana* area decision, Opinion No. 546 and order in AR61-2, the court indicated[3] that we had authority under Section 16 of the Natural Gas Act to stay, modify or rescind any part of our order, notwithstanding the court's affirmance, if circumstances made a change advisable. The court on rehearing confirmed our authority to reopen any part of the *Southern Louisiana* orders, including those affecting revenues from gas already delivered, and to make retrospective as well as prospective adjustments in the public interest. The court specifically said that the Commission might let its refund orders stand, or, if it found the refunds too burdensome, might remedy the situation by changing its orders.

24. The court refused to stay issuance of its mandate affirming our rate determinations in Opinion No. 546, and the judgment was issued as the mandate on July 14, 1970. However, as noted above, we have stayed any rate reductions or refunds required to be made in Opinion No. 546 and order.

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3. *Southern Louisiana Area Rate Cases, supra.*

25. The result is that the just and reasonable rates applicable to the Southern Louisiana area in which the Rayne Field is situated have not been fully determined, nor has it been determined whether refunds should be made by the producers in that area either for the periods before or after October 1, 1968. In these circumstances it is our opinion that the public interest precludes our ordering refunds to be paid by the Rayne Field producers at this time. The myriad problems confronting the Commission in coping with producer regulation render our task difficult and complex, at best. However, the one objective that must always be kept in sight is the need to provide fair and equal treatment for all of those regulated. It is essential, therefore, that the four producers involved in this proceeding should be afforded the same treatment as will be given to all other producers in Southern Louisiana. In this regard, we believe that the just and reasonable rates which ultimately flow out of any settlement, or further proceedings in AR61-2, or AR69-1, should govern the level of payments in this case prior to October 1, 1968, as well as after that date. While we may find ultimately that refunds should be paid, we need not discuss here the contentions made by Continental with respect to the appropriateness of refunds or their computation (assuming a firm Southern Louisiana area rate).

# BRIEF FOR THE RESPONDENTS IN OPPOSITION

SUPREME COURT, U. S.

FILED

OCT 14 1970

E. ROBERT SEAVER, CLERK

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1970

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Nos. 669, 680, 681, 682, 683, 684, 685, 691 and 692

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MUNICIPAL DISTRIBUTOR GROUP, ET AL., *Petitioners,*

v.

FEDERAL POWER COMMISSION, ET AL., *Respondents.*

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**On Petitions for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit**

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## BRIEF IN OPPOSITION FOR RESPONDENT, PIPELINE PURCHASER GROUP

**(Southern Natural Gas Company, Tennessee Gas Pipeline Company, Texas Gas Transmission Corporation, Texas Eastern Transmission Corporation, Transcontinental Gas Pipe Line Corporation, Trunkline Gas Company, United Fuel Gas Company, United Gas Pipe Line Company)**

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October 14, 1970

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IN THE

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**On Petitions for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit**

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## BRIEF IN OPPOSITION FOR RESPONDENT PIPELINE PURCHASER GROUP

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Respondent Pipeline Purchaser Group[1] opposes the petitions for writ of certiorari in the above-captioned nine causes, all of which relate to the judgment of

[1] The Pipeline Purchaser Group sought judicial review below but is solely a respondent here. The group consists of eight interstate pipeline purchasers, Southern Natural Gas Company, Tennessee Gas Pipeline Company, Texas Gas Transmission Corporation, Texas Eastern Transmission Corporation, Transcontinental Gas Pipe Line Corporation, Trunkline Gas Company, United Fuel Gas Company, and United Gas Pipe Line Company.

the United States Court of Appeals for the Fifth Circuit entered on March 19, 1970, because under present circumstances the petitions are premature.

## OPINIONS BELOW

The opinion of the Court of Appeals dated March 19, 1970, and its opinion on petitions for rehearing dated June 16, 1970, are not yet reported but have been printed as appendices to Continental Oil Company's petition in No. 680, Appendix A, pages 1-70 and Appendix B, pages 1-3, respectively. The opinions and orders of the Federal Power Commission are reported at 40 FPC 530, and 41 FPC 301, respectively.

## JURISDICTION

Petitioners have sought to invoke the jurisdiction of this Court under 28 U.S.C. 1254(1) and Section 19(b) of the Natural Gas Act, 15 U.S.C. 717r(b).

## QUESTION PRESENTED

In light of the opinions and judgment below, and the active status of related proceedings being heard by the Federal Power Commission ("Commission") in Docket Nos. AR 69-1, *et al.*, the Pipeline Purchaser Group believes all petitions for writs of certiorari in this case to be premature. Therefore, in our view the question actually presented is:

> Whether it is premature for this Court to review at this time procedural and substantive matters raised by petitioners, since the court below preserved to the Commission the responsibility for determining, in the first instance, the manner in which the recently recognized shortage of natural gas should be treated in prescribing producer rates—an undertaking the Commission is vigorously pursuing in proceedings which have not yet been concluded.

## STATEMENT OF THE CASE

Although the petitions adequately describe the general history of the case, they do not focus sharply upon the problem with which the court below, and even more directly the Commission, was confronted.

This proceeding, the second initiated by the Commission under its program to regulate the rates of independent producers of natural gas through area ratemaking, commenced in May, 1961. At that time, and throughout the evidentiary stages of this proceeding, natural gas supplies from the Southern Louisiana area were adequate to meet consumer requirements, although the margin of safety was progressively narrowing.

By the time the Commission issued its decision, Opinion No. 546, on September 25, 1968, the shortage had reached the point at which interstate pipeline purchasers were unable to purchase currently the supplies of gas needed to meet their growing market requirements. Accordingly, when Opinion No. 546 was issued, the Pipeline Purchaser Group filed with the Commission a motion requesting the opportunity to bring to its attention tangible facts as to the gas supply problem, certain in the knowledge that the situation would deteriorate sharply unless the Commission took remedial steps through modification of the recently issued rate order. (R. 398858). Other parties made similar requests.

Although the Commission did not then apprehend the extent to which the gas supply shortage had overtaken the industry, and so did not reopen the proceeding for evidence as to this critical problem, it sought to resolve the issue by initiating another area rate

proceeding for Southern Louisiana, on the same day it denied rehearing in the instant proceeding. The new area rate proceeding, Docket No. AR 69-1, has been moving forward on an accelerated basis throughout the period the instant matter has been under judicial review.

Also, the Commission did not make effective the rate levels provided in its order in the instant proceeding, nor require the payment of refunds based upon such rate levels. In part, this is the result of stay orders issued by the Commission and the court below, and in part it is attributable to the fact that the Commission has not deemed it timely to order such actions.

As the hearings in the new area rate proceeding were commencing, the Commission enlarged the subject matter, initially relating only to offshore regions of the Southern Louisiana area, so as to embrace the onshore regions as well. Thus, the Docket No. AR 69-1 proceeding applies to the entire Southern Louisiana area, and to all vintages of gas, as well as to the appropriate price level for future discoveries.

The Pipeline Purchaser Group, while actively participating in the Docket No. AR 69-1 proceedings, also petitioned for judicial review in the United States Court of Appeals for the Fifth Circuit, urging that the Commission be directed to relate its Southern Louisiana rate order to the eliciting of adequate gas supplies for consumer needs, in light of current conditions.

Without detailing the steps leading to the judgment of the Court of Appeals, it is sufficient for present purposes to note that the Commission ulti-

mately requested a remand, and the court below undertook to assure petitioners and other parties that the Commission would be free to take such action as it deemed necessary to counteract the gas supply shortage. The Commission is currently attempting to do so with active cooperation of almost all the parties, including those involved in this litigation.

As recognized by the court below, the members of the Pipeline Purchaser Group appear in the instant matter solely in their role of purchasers and transporters of Southern Louisiana gas, and their alignment results from the fact that "they are concerned that the price level will not elicit sufficient supply for their needs" (Continental Appendix A, page 2). This is true with respect to this Brief in Opposition as well.

We urge the Court to permit the Commission to proceed as rapidly as possible to resolve the entire pricing problem for the Southern Louisiana area so as to ameliorate what has become a critical gas shortage of nation-wide proportions. This objective can be attained most directly and expeditiously through denial of the petitions for writs of certiorari as prematurely brought.

## ARGUMENT

### I.

### In Its Present Posture, Supreme Court Review of the Judgment Below Would Be Premature

The petitions for writs of certiorari variously seek to question (1) the ratemaking formulae applied by the Commission, some contending that the resultant rates were too low (Nos. 680, 681, 683, 684, 685), and another petitioner contending that they were too high (No. 692); or (2) the procedure employed by the court

below for the purpose of enabling the Commission to implement its rate order if it saw fit while preserving the Commission's authority to modify the order if needed (Nos. 669, 691). Petitioner in No. 692 seeks further review as to both aspects. Finally, the major producer group, Texaco, *et al.*, has conditionally cross-petitioned in No. 681, recognizing prematurity but seeking the right to raise substantive issues in the event certiorari should be granted as to other petitions.

In our view, because of the particular circumstances involved, this case in its present posture presents no issue which is ripe for review. Until the Commission takes further action, which would of necessity be subject to appellate review, no party can be finally affected by the judgment below. And, until the Commission acts, no party can foretell which issues, if any, will ultimately be relevant.

Thus, although it is understandable that parties wish to protect their future positions, or even to obtain judicial sanction for those positions, neither of these objectives calls for affirmative action by the Court at this time.

What is required, we submit, is that the Commission be permitted to take such action as *it* finds to be appropriate in meeting the natural gas shortage in this all-important producing region, and to do so as soon as physically possible. This is so clearly required—and so patently an administrative function—that judicial intervention at this point is neither necessary nor appropriate. It will be time enough to review the court's procedural determination as well as the Commission's substantive ratemaking formulae when an administrative order has been entered dealing comprehensively with all these matters.

As noted above, the Commission instituted a new area rate proceeding in Docket No. AR 69-1 on March 20, 1969, the same day that it denied rehearing in the instant cause. Although initially limited to more recent vintages of gas from the offshore region of Southern Louisiana, the scope of the proceeding was enlarged on December 15, 1969, to embrace *all* vintages of gas from *all* regions of Southern Louisiana.

That proceeding, which none of the petitioners has sought to abort, is presently in a very advanced evidentiary hearing stage and settlement negotiations are progressing concurrently. Since one of the principal objectives of the proceeding is to come to grips with the economic aspects of the current gas shortage, there is every reason to allow that proceeding to be concluded, and no substantial reason to destroy it through piecemeal review of various portions of its subject matter.

The petitions in Nos. 669, 691 and 692 set forth various allegations regarding the impact of the judgment below as to potential refunds, but the facts are that the Commission has never entered an order requiring the payment of refunds in this proceeding. Nor does the court's action in any way preclude ultimate refunds. Contrary to the views expressed in those petitions, the principal issue below related to the rate levels which should have been prescribed—but both the Commission and the Court of Appeals have been at pains to maintain maximum flexibility for the ultimate determination of those rate levels by the Commission.

Since there is no reason to believe that the Commission will shirk its responsibility, and on the con-

trary, there is every indication that it is seeking to arrive at a fair and efficacious solution to a very complex problem, it clearly should not now be hampered or foreclosed.

Finally, with regard to the procedural matters, it is not at all clear that the court's reference to the Commission's freedom to make "retrospective as well as prospective adjustments in this case" would sanction "reparations" or "retroactive ratemaking" as some petitioners suggest. In the first place, as explained above, the Commission's original rate order was never implemented, so this is not an instance of rates having been made effective and later changed, *nunc pro tunc*. Moreover, since the Commission has not taken definitive action in this regard, there is no basis for contending that it has acted unlawfully.

If, in fact, the consequence of the judgment below, or the Commission's action in pending proceedings, were to result in "reparations" or "retroactive ratemaking", the Pipeline Purchaser Group would urge that certiorari be granted and the decision of the court below summarily reversed with directions to remand to the Commission for full reconsideration in light of the critical gas shortage. But, in our opinion, nothing of this nature has occurred.

Thus, both as to the substantive aspects and the procedural questions, the petitions for writs of certiorari present no issue which must, or should be, resolved at this time. The entire subject matter should remain, or be placed, in the hands of the Commission for a definitive determination at the earliest possible time.

## CONCLUSION

Wherefore, for the foregoing reasons, the Pipeline Purchaser Group requests that all petitioners for writs of certiorari in these proceedings be denied.

Respectfully submitted,

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October 14, 1970